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SERIAL NUMBER	067376437	FILING DATE	06/16/97	FIRST NAMED APPLICANT	STATIONMARK, INC.	ATTORNEY DOCKET NO.	M
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QM31/0721

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EXAMINER	
O'HARA, K	
ART UNIT	PAPER NUMBER
3738	

DATE MAILED: 07/21/98

Please find below a communication from the EXAMINER in charge of this application.

Commissioner of Patents

Office Action Summary

Application No.
08/876,437

Applicant(s)
Giakoumakis

Examiner
Kelly O'Hara

Group Art Unit
3738



☐ Responsive to communication(s) filed on _____

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-9 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-9 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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DETAILED ACTION

Continued Prosecution Application

1. The request filed on 6-5-98 for a Continued Prosecution Application (CPA) under 37 CFR 1.53(d) based on parent Application No. 08/876437 is acceptable and a CPA has been established. An action on the CPA follows.

Claim Rejections - 35 USC § 112 and 35 USC § 101

2. Claims 1-9 are rejected under 35 U.S.C. 101 because the claimed invention, sustainable, non surgical breast augmentation through cocoa butter and Vitamin E is not supported by either a credible asserted utility or a well established utility.

Applicant's assertion of specific credible utility is not considered credible. One of ordinary skill in the art would not find applicant's assertion of utility credible because applicant has not offered any statistically significant evidence to prove such.

Claims 1-9 are also rejected under 35 U.S.C. 112, first paragraph. Specifically, since the claimed invention is not supported by either a credible asserted utility or a well established utility for the reasons set forth above, one skilled in the art clearly would not know how to use the claimed invention and would not find applicant's assertion of utility credible because applicant has not offered any statistically significant evidence to prove such as stated previously.

3. Examiner was unable to contact the web site for "African Medicines Formulary; Vitamins." It is requested that applicant confirm that web site is still active and open.

Conclusion

4. This is a continuation of applicant's earlier Application No. 08/876437. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first

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action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Kelly O'Hara. Inquiries of a general nature should be directed to the Group 3700 receptionist. Official responses can be filed 24 hours a day to the Official fax number listed below, subject to the provisions of 37 C.F.R. 1.6(d). Unofficial faxes which are meant for discussion purposes only should be sent to the Unofficial Fax number below; **it is strongly suggested that the Examiner be contacted directly before sending any Unofficial Fax.**

Contact numbers:

Examiner O'Hara	703-308-0780
SPE Mickey Yu	703-308-2672
Group 3700 Receptionist	703-308-0858
Group 3700 Official Fax	703-305-3590
Art Unit 3738 Unofficial Fax	703-308-2708



Kelly O'Hara
July 16, 1998



David H. Willse
Primary Examiner